

PUBLICATION

New Amendments to Florida's Proceedings Supplementary Statute Offer Clarity and Guidance for Judgment Creditors

Authors: Zachary J. Bancroft

April 20, 2016

Chapter 56 of the Florida Statutes provides the framework for judgment creditors to collect amounts owed pursuant to money judgments. Within Chapter 56, Section 56.29 governs the process by which a judgment creditor may seek to recover property transferred to, or concealed by, third parties. Although the purpose of the statute was to streamline and simplify the process of collecting on a judgment, the lack of procedural clarity led to conflicting decisions and uncertainty. Amid due process concerns, courts often erected significant procedural hurdles to cost-effective collection efforts against third parties. The new amendments to Section 56.29, which go into effect on July 1, 2016, provide practitioners with some much needed clarity.

Historical Context

Initially enacted in 1919, Section 56.29 was an attempt by the Florida legislature to streamline the process used to prevent the fraudulent disposal or concealment of the judgment debtor's property. Although the legislature's goal was laudable, the statute lacked procedural clarity. As a result, a patchwork of case law developed to fill in the gaps left by the legislature. For instance, although the prior versions of the statute clearly anticipated the need to bring third parties into the existing litigation post judgment, courts were left without any direction regarding the procedural process for doing so. As a result, some courts issued an order to show cause against third parties. Other courts required a judgment creditor to file a separate complaint impleading third parties. Some courts proceeded without notice to the third party altogether, raising due process concerns. Even where third parties were notified of an action against them, significant confusion existed over the rights available to third parties in these proceedings. The amendments to Chapter 56 addresses these and other concerns.

Definitions and Terms

In the revised statute, "judgment debtor" replaces the terms "defendant" and "defendant in execution." Similarly, "judgment creditor" replaces the terms "plaintiff," and "plaintiff in execution." A judgment creditor is defined as the "holder of an unsatisfied judgment, order, or decree for the payment of money, including a transferee or surety, who has the right to control and collect the judgment." *Fla. Stat.* §56.0101. Although there was never any confusion that the statute applied to anyone with a judgment – plaintiff or defendant – the statute now makes this clear.

Notably, although the prior version of the statute allowed execution on any "judgment" or "decree," the new version provides that execution may also be had on an "order." *Fla. Stat.* § 56.021. This addition indicates that executions may be had on pre or post-judgment sanctions orders and the like. By contrast, Section 56.29 is confined to "judgment creditors hold[ing] an unsatisfied judgment or judgment lien." As such, the proceedings supplementary process – under the old and new versions of the statute – is not available to creditors who do not have a judgment.

Notification and Rights of Third Parties

As previously noted, confusion existed under the old version of the statute as to the procedures to implead third parties and the rights afforded to those third parties. The revised statute streamlines the process to bring

third parties into the action. Except in the case of a fraudulent transfer claim (discussed below) a judgment creditor initiates proceedings supplementary by filing a motion. The motion must describe any property of the judgment debtor not exempt from execution. Provided the motion includes these things, the creditor "is entitled to" proceedings supplementary. *Fla. Stat.* §56.29(1). Service of the notice to appear makes them third parties to the action. Among other things, the notice must describe with reasonable specificity the property at issue, require the third-party to serve an answering affidavit within a specified time to be determined by the court and advise the third party that he or she has the right to a jury trial. Notably, the response to the notice must include any defenses, including the defense of lack of personal jurisdiction. By implication, this means that pre-answer motions (i.e. motions to dismiss) are not permitted.

Discovery in Proceedings Supplementary

Chapter 56 includes newly created Section 56.30 entitled "Discovery in Proceedings Supplementary." The prior version of Section 56.29 included a provision requiring the judgment debtor to appear before a general or special magistrate to testify as to his or her financial interests. However, confusion existed over whether this testimony was to occur at a final hearing before the court to adjudicate the right to property or whether this was a preliminary hearing which should occur before the third party was summoned to appear before the court.

The revisions make clear that this is simply a discovery tool which may be used "in addition to any other discovery permitted under the rules of discovery." *Fla. Stat.* § 56.30. The new rule also specifies that this inquiry may take place before or after the third party is commanded to appear. As before, the rule provides that "any party" may call other witnesses to be examined concerning the property at issue. Logically, to avoid due process concerns, the third party should have the opportunity to examine the judgment debtor or other witnesses. As a practical matter, in order to avoid duplicate discovery, the third party should be served with the notice of action prior to any testimony by the judgment debtor concerning the property at issue.

Uniform Fraudulent Transfer Act Claims

Aside from the changes to the procedure by which third parties are brought into the action, revisions to the rule relating to fraudulent transfers represent the most significant revisions to the rules regarding proceedings supplementary. Previously, the statute simply provided that the court "may" entertain claims under Chapter 726. But courts and practitioners were left to wonder how such proceedings should be initiated and the interplay between Chapter 56 and Chapter 726. The new rules require that a judgment creditor initiate a fraudulent transfer action by filing a complaint. Unlike the provision dealing with the notice of action which requires the response to set forth any defenses, the new statutory provisions state that the Florida Rules of Civil Procedure apply. As such, fraudulent transfer complaints may be met with motions to dismiss or other appropriate defensive pleadings.

Previously, some practitioners argued that the four year statute of limitations under Section 726 applied to fraudulent transfer claims brought in the context of proceedings supplementary. This argument has almost universally been rejected by the courts. The revised statute does little to clarify this debate. The revised statute provides that "the claims under the supplemental complaint are subject to Chapter 726 and the Rules of Civil Procedure." *Fla. Stat.* § 56.29(9). However, since newly revised Section 56.29 provides the procedure by which fraudulent transfer claims may be brought, presumably all such claims brought using Section 56.29 may be commenced at any time during the 20 year life of the judgment.

Conclusion

Proceedings supplementary are a powerful tool for collecting a money judgment. Although the 2016 amendments to this statute represent a significant improvement over prior versions, utilizing it to collect on a money judgment remains challenging. The ability to successfully navigate this statute and the attendant case law is crucial to cost-effective collection efforts.

